

such action has been brought, it has been sustained; Commissioners of the Customs against Morison, No 75. p. 9533, where action was sustained for the price, although the goods were seized before delivery; Wilkie against M'Neil, No 77. p. 9538; Drummond against Yule, (See APPENDIX.) Bank. b. i. t. 19. § 17. Walker against Falconer, No 80. p. 9543.

No 84.

The Court were of opinion, That, in this case, it was not necessary to determine the point, at what time smuggled goods are put *extra commercium*, and vested in the Crown, as, from the other circumstances, there was sufficient ground for holding the transaction to be unlawful.

The judgment was, " Find no action lies on the note in question, and assoilzie the defenders."

A reclaiming petition for the pursuers was refused without answers.

Lord Ordinary, *Auchinleck*. Act. *Rae, G. Wallace*. Alt. *Cullen*. Clerk, *Tait*.  
*Fol. Dic. v. 4. p. 31. Fac. Col. No 74. p. 138.*

1788. December 5. JAMES M'LEAN against JOHN SWORD.

No 85.

SWORD purchased, within land, from M'Lean, some brandy and coffee-berries, of which the latter was not the importer. The goods not being accompanied with a permit, were soon afterwards seized, by the officers of the revenue; and, in fact, it appeared that the duties had not been paid for them. M'Lean brought an action for payment of the price against Sword, who

*Pleaded*; That this being a smuggling, and therefore an illegal contract, could afford no ground of action in a court of law; agreeably to the decision in the case of M'Lure and M'Cree *contra* Paterson, 26th Feb. 1779, No 84. p. 9546.

*Answered* for the pursuer; In the case referred to, action was indeed refused for the price of brandies imported in unenterable casks, and purchased at sea, within the limits of a port. But it would be dangerous to extend this principle to such cases as the present, where goods have passed, on shore, from hand to hand: For thus it would be in the power of every retail customer to plead that objection, to the great embarrassment and prejudice of trade.

The Court admitted the distinction, and adhered to the judgment of the Lord Ordinary, 'Repelling the defences, and finding the defender liable,' &c.

Lord Ordinary, *Alva*. Act. *Armstrong*. Alt. *Wm. Stewart*. Clerk, *Tait*.  
*L. Fol. Dic. v. 4. p. 32. Fac. Col. No 2. p. 2.*